

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,) Case No.
) 4:15-CR-6049-EFS-16
Plaintiff,)
) April 10, 2019
v.)
) Richland, Washington
EDGAR OMAR HERRERA FARIAS,) In Court Hearing
)
Defendant.) Pages 1 to 10

BEFORE THE HONORABLE EDWARD F. SHEA
SENIOR UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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1 (April 10, 2019; 10:02 a.m.)

2 THE COURTROOM DEPUTY: Matter before the Court is *United*
3 *States of America v. Edgar Omar Herrera Farias*, Cause
4 No. 4:15-CR-6049-EFS, Defendant No. 16. Time set for
10:02:40 5 sentencing.

6 Counsel, please state your presence for the Court and
7 record.

8 MS. VAN MARTER: Stephanie Van Marter and Caitlin
9 Baunsgard on behalf of the United States. Good morning again.

10:02:48 10 THE COURT: Good morning.

11 MR. SCHWEDA: Pete Schweda with Mr. Herrera Farias, Your
12 Honor.

13 THE COURT: Good morning to you both. Okay. Let's get
14 started.

10:02:58 15 MR. SCHWEDA: Your Honor, my client has indicated he
16 wants to -- wants me discharged as his counsel, and we would ask
17 the Court to --

18 THE COURT: You need to come to the podium.

19 MR. SCHWEDA: We would ask the Court to take that up in
10:03:15 20 an ex parte proceeding before we go any further.

21 THE COURT: When was the plea entered in this case? Was
22 it October?

23 MR. SCHWEDA: I don't recall.

24 THE COURTROOM DEPUTY: October 10th.

10:03:28 25 THE COURT: October 10th. Give me a moment.

1 (Pause in proceedings.)

2 THE COURT: It looks like the initial appearance in this
3 case was 12-16-16, and at that time Mr. Swanberg was appointed,
4 I believe. Okay. And then sometime later, in August of '17,
10:04:35 5 August 22nd of '17, Mr. Schweda, you were appointed.

6 Does that ring a bell?

7 MR. SCHWEDA: That's correct, and that's because
8 Mr. Swanberg was appointed to -- as a county superior court
9 judge.

10:04:49 10 THE COURT: Right. I recall that.

11 Let's see. Okay. And then I recall there were hearings
12 throughout the fall, and that was in '17, so all of '18; and
13 then preparation for trial. And I've reviewed your vouchers, so
14 I know what you were doing by way of preparation for trial,
10:05:11 15 which was scheduled for October, and my recollection is your
16 client pled the day of trial.

17 Is that correct?

18 MR. SCHWEDA: That's correct. And I might add --

19 THE COURT: And that was October 10th. So you were his
10:05:24 20 attorney from August of '17 right through the present time.

21 MR. SCHWEDA: Correct.

22 THE COURT: Okay. It looks like about 20 months to me,
23 19 or 20 months.

24 Is that right?

10:05:59 25 MR. SCHWEDA: Sounds right.

1 THE COURT: Okay. We'll have a hearing. If you're not
2 related to the case, please step out.

3 MS. VAN MARTER: Are you excluding --

4 THE COURT: No, yes, the Government has to leave.

10:06:11 5 MS. VAN MARTER: Yes. Just making sure.

6 THE COURT: It's an ex parte hearing; the courtroom is
7 closed.

8 MR. SCHWEDA: If I may introduce Bertha Alvarez and
9 Margarita Alvarez, who are my client's aunts, and they have been
10 attempting to secure counsel for Mr. Herrera Farias.

11 THE COURT: For the last 20 months?

12 MR. SCHWEDA: Well, you can ask them as to whether --

13 THE COURT: I don't need to ask them anything. They're
14 not part of the case.

10:06:42 15 Thank you for being here.

16 MR. SCHWEDA: Okay.

17 THE COURT: They need to step out.

18 MR. SCHWEDA: Okay. And then my investigator, who
19 is also --

10:06:47 20 THE COURT: He can stay.

21 MR. SCHWEDA: Okay.

22 THE COURT: Unless he wants his aunts here. If he wants
23 his aunts here, that's up to him.

24 MR. SCHWEDA: No, that's fine. I'd prefer them to be
10:07:05 25 here, Your Honor.

1 (Courtroom closed; proceedings filed under seal.)

2 (Courtroom opened.)

3 THE COURT: Well, I've heard the ex parte hearing with
4 Mr. Schweda and Mr. Farias, and on the basis of the record made
10:24:45 5 at that hearing, the Court's informed that Mr. Farias is going
6 to file a motion to withdraw his plea through a new attorney,
7 and that the Court is going to refer the matter back to the
8 magistrate judge for the appointment of counsel. And we'll set
9 a -- I'm going to have the parties meet and confer. I'll enter
10:25:11 10 an order that requires the parties to meet and confer, Counsel,
11 within 30 days of counsel's appointment, and to provide the
12 Court with a scheduling order, suggestions on any motions for
13 withdrawal of plea, and then a new sentencing date as a backup.

14 So I will then -- that's the order that I will enter
10:25:42 15 today. I'll say no more about the merits of any of that, except
16 that that's how I'm going to proceed.

17 Is there anything further before I move to another
18 issue?

19 MR. SCHWEDA: Not from me, Your Honor.

10:26:00 20 MS. VAN MARTER: Not -- not from the United States, Your
21 Honor.

22 THE COURT: Okay. I'm going to move to the issue of
23 your violation of the amended case management order.

24 The Court recalls that shortly before October 10th,
10:26:12 25 Mr. Schweda, you filed motions that were well beyond the motion

1 filing deadline date; that you provided certain material and
2 filed motions and took actions that were technical and both
3 violated the letter and the spirit of the case management
4 orders.

10:26:32 5 And based on what I reviewed, your vouchers and the
6 timing when you did that, the Court believes it was an
7 intentional violation to determine to get you a strategic
8 advantage for trial, and that it was a willful violation of the
9 case management order; that you did not ask for permission; you
10:26:54 10 simply started filing things that you knew were beyond the
11 deadlines; and were -- it was so late in the case, that the
12 Government was put in a difficult position to try to get ready
13 for trial with those -- with that material.

14 MR. SCHWEDA: Your Honor, I've -- and I didn't know we
10:27:13 15 would go into this right now. I have prepared a response that
16 I'm ready to -- I just have to call my assistant to file it
17 electronically. I brought hard copies. I'd ask the Court, and
18 I'll give a copy to the Government, to at least consider this
19 response before you impose sanctions, if you feel that they're
10:27:38 20 still necessary.

21 THE COURT: Ms. Van Marter, do you have any position on
22 this?

23 MS. VAN MARTER: Your Honor, I think that the Court
24 has -- I -- my recollection has first touched upon this prior to
10:27:51 25 the trial date, which is prior to the October time period. At

1 that point in time, some of those issues are hard for the United
2 States to comment on because there are some billing references
3 and other requests that we are not a party to, but I certainly
4 think there's been sufficient time to address this matter prior
10:28:07 5 to today's date. I obviously haven't seen Mr. Schweda's motion,
6 so upon that it's hard to comment, but I certainly think --

7 THE COURT: You can file whatever you want, Mr. Schweda.
8 I'll take it under advisement. I'll read it before I impose
9 sanctions.

10:28:22 10 Anything else?

11 MR. SCHWEDA: No, Your Honor.

12 THE COURT: Okay. That has nothing to do with the
13 merits of today's hearing, my decision to have new counsel
14 appointed. That's based solely on Mr. Schweda's actions in
10:28:36 15 trying to, in my mind, get his client a strategic advantage in
16 violation of both the letter and spirit of the case management
17 order, and nothing more. It doesn't inform in any way this
18 issue about whether his client has a basis to withdraw his
19 guilty plea, in spite of the lengthy and pointed inquiries made
10:29:00 20 during the plea colloquy while he was under oath, sworn to tell
21 the truth.

22 Is there anything more before we conclude today's
23 hearing?

24 MS. VAN MARTER: No, Your Honor. Thank you.

10:29:09 25 MR. SCHWEDA: No, Your Honor.

1 THE COURT: Okay. The matter will be referred to the
2 magistrate for appointment, and you can file your materials at
3 your leisure.

4 Anything further?

5 MS. VAN MARTER: No.

6 THE COURT: Court's in recess until the next case in the
7 afternoon. You may go about your business.

8 (Hearing concluded at 10:29 a.m.)

10:29:17

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C E R T I F I C A T E

I, KIMBERLY J. ALLEN, do hereby certify:

That I am an Official Court Reporter for the United States District Court for the Eastern District of Washington in Richland, Washington;

That the foregoing proceedings were taken on the date and at the time and place as shown on the first page hereto; and

That the foregoing proceedings are a full, true and accurate transcription of the requested proceedings, duly transcribed by me or under my direction.

I do further certify that I am not a relative of, employee of, or counsel for any of said parties, or otherwise interested in the event of said proceedings.

DATED this 17th day of June, 2019.



Kimberly J. Allen, CRR, RMR, RPR, CCR(WA)
Washington CCR No. 2758
Official Court Reporter
Richland, Washington